

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of)	DOCKET TS-070889
)	
AQUA EXPRESS, LLP,)	ORDER 01
)	
Petitioner,)	
)	
For Commission Permission to)	
Temporarily Discontinue Commercial)	ORDER SETTING MATTER
Ferry Service)	FOR HEARING
.....)	

BACKGROUND

- 1 On May 7, 2007, Aqua Express, LLP, (Aqua Express or Company), holder of commercial ferry Certificate of Public Convenience and Necessity No. BC-129, filed a petition with the Washington Utilities and Transportation Commission (Commission) requesting permission to temporarily discontinue service pursuant to WAC 480-51-130. In its petition, the Company requests permission to extend its discontinuance of passenger-only ferry service from June 4, 2007, to June 4, 2009.
- 2 Aqua Express is authorized to provide commercial passenger-only ferry service between Kingston and Seattle, Washington.
- 3 In September 2005, in Docket TS-051318, the Company requested its first temporary discontinuance of service authorized under its Certificate of Public Convenience and Necessity for the period of October 1, 2005, to June 30, 2006. The Commission granted the request.
- 4 In June 2006, in Docket TS-060903, the Company filed its second request, to further discontinue service for the period of July 1, 2006, to December 31, 2006. The Commission granted the request.
- 5 In December 2006, in Docket TS-060903, the Company filed its third request, to further discontinue service for the period of January 1, 2007, to June 4, 2007. The Commission granted the request.

6 In the instant petition, its fourth request, the Company requests that the Commission grant it permission to extend the temporary discontinuance of service for an additional twenty-four months, from June 4, 2007, to June 4, 2009. The Company states that it is continuing to explore several options with Kitsap Transit, the regional Public Transportation Benefit Authority, for resuming service.

7 Aqua Express filed its petition under WAC 480-51-130.

8 Kingston Express Association (Kingston Express), a non-profit association, has stated that it intends to apply for a Certificate of Public Convenience and Necessity that includes the same authority currently held by Aqua Express, if outside funding for the association becomes likely.

DISCUSSION

9 Aqua Express filed its petition requesting a twenty-four month extension of its discontinuance of passenger-only ferry service pursuant to WAC 480-51-130. The maximum extension period allowed by WAC 480-51-130 is twelve months. The Company did not file any request for waiver of the rule.

10 The Commission has previously granted a total of 20 consecutive months of discontinued service based upon adverse financial conditions faced by Aqua Express and the Company's expectations that the tide would turn in favor of resuming service. The current petition suggests that it may be at least 24 more months before service can resume.

11 A Certificate of Public Convenience and Necessity endows the holder with certain legal rights to the route which may deter other potential providers from seeking a Certificate for the same route. Where the Certificate holder is unable to provide service for a prolonged period of time, the public interest requires a careful examination of the merits of granting further discontinuances of service. This is particularly true when there is evidence of at least one hypothetical alternative provider (Kingston Express) that has expressed interest in applying for a Certificate.

12 The current record is insufficient to determine the likelihood that the Company could resume service within a reasonable time or to evaluate any alternatives. Therefore, the petition should be set for hearing.

FINDINGS AND CONCLUSIONS

- 13 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington vested by statute with the authority to regulate rates, regulations, practices, accounts, securities, and transfers of public service companies, including commercial ferry companies. *RCW 80.01.040, RCW 81.04, RCW 81.28, RCW 81.84 and WAC 480-51.*
- 14 (2) Aqua Express is a commercial ferry operator and a public service company subject to the jurisdiction of the Commission. Aqua Express holds Certificate of Public Convenience and Necessity No. BC-129.
- 15 (3) The Commission finds that Aqua Express has not presented good cause to extend the discontinuance of passenger-only ferry service from Kingston to Seattle for an additional twelve-month period.
- 16 (4) The Commission finds and concludes that there is sufficient cause to order a hearing of this matter, at a time and place to be set by separate order, with notice to all parties.
- 17 (5) This matter was brought before the Commission at its regularly scheduled open meeting on May 23, 2007.

ORDER

THE COMMISSION ORDERS:

- 18 (1) The Commission will hold hearings at such times and places to be set in a separate order.

DATED at Olympia, Washington and effective May 23, 2007.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner